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Table of Authorities Cited

Political Code:	Pages
Section 3480 (e)	2, 3, 5, 6, 7
Section 3480 (f)	4, 5

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 345

RAY G. HOUSTON, as and constituting the County Treasurer of Sacramento County, State of California, and Ex-officio Trustee of Reclamation District No. 1000,

Petitioner,

vs.

THOMAS MCCORMACK and GEORGE J. MEISTER, and T. B. SILLS, as and constituting the Board of Trustees of Reclamation District No. 1000 (a public corporation),

Respondents.

BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, Third Appellate District.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

In opposition to the petition for writ of certiorari filed herein Respondents respectfully show:

SUPPLEMENTAL STATEMENT OF CASE.

Petitioner's statement fails to show many matters in the record essential to an intelligent understanding of the case including, among others, the following:

(a) No authority existed under State law to set up a reserve.[1] Therefore, in June of 1937 the District with the approval of the R.F.C. caused Section 3480(e) California Political Code to be enacted.[2] (R. 10-11.) This law, while general in wording, is essentially a special act designed to meet a special situation, i.e. the reserves here set up.

By its express terms the authority for the reserve under Section 3480(e) runs only in favor of the

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[1]See Legislative Declaration of Urgency which is a part of Section 3480(e), California Political Code, but is omitted from Petition Appendix A. Note particularly the portion thereof reading as follows:

> "• • • Reconstruction Finance Corporation frequently requires that districts receiving such grants shall provide and set up reserve funds to insure the prompt payment of principal and interest to accrue under said loans, *and that reclamation districts are not now authorized or empowered to comply with such requirements.*" (Italics ours.)

A full copy of the Declaration of Urgency is attached hereto as Appendix 1.

[2]Reclamation Districts under California law, in contrast with Irrigation Districts and similar agencies, were not authorized to create reserves but were required to levy such additional percentage as might be necessary above principal and interest demands to cover delinquencies. (R. 98.)

R.F.C. or other Federal agency. There is no authority under the act to create the reserve in favor of private persons or agencies. If, for example, the District had been refinanced by private agencies as, say the bond syndicate, which bought the bonds from R.F.C. (R. 16) there would have been no authority under Section 3480(e) to set up a reserve. Except for the Pescadero Reclamation District which was refinanced under a "cumbersome" method of escrowing old bonds (R. 11); (Pet. pp. 6-7), the record shows no refinancing by the R.F.C. of any reclamation district except Reclamation District No. 1000. That district, that section, and this case stand alone.

(b) The refunding bonds which were to go to the R.F.C. were authorized at an election of the landowners on July 19, 1934. (R. 8.) They contained no reference to a reserve fund nor does the resolution providing for their issuance. (R. 52-59 Ex. "C".) The Court below points out that under the State law the landowners' agreement was " 'to pay the assessment in ten equal annual payments with such additional percentage as may be necessary to cover delinquencies. * * * the purchaser of the bonds, based upon the assessment, accepts the bond based upon the premises which we have stated, and his right is to have collected from each landowner the annual percentage of the assessment as specified in the bond—no more and no less.' " (R. 98.)

(c) The refinancing agreement with the R.F.C. (R. 37 Ex. "A") was replete with many collateral covenants obviously personal in nature and which by

no stretch of imagination could "follow the bonds" nor was it contended by Petitioner that they did. Among other covenants was paragraph 8(k) (R. 46), reading as follows:

> "(k) Successor: All resolutions and agreements by the District shall provide that any consents that may be given by and any rights thereby conferred upon this Corporation may be exercised by any successor to this Corporation designated by Act of Congress or by any Department of the United States Government or any corporation wholly owned by it, or by any person holding responsible office under the United States Government that may at any time be designated for that purpose by this Corporation."

(d) No assignment of the right of the R.F.C. in its contract with the District (R. 37, Ex. "A") nor in the reserve fund was asked by the bond purchasers and no assignment was given. (R. 16-17.)

(e) There was also before State Court Section 3480 (f) of the California Political Code as amended in 1939 with the consent and approval of the R.F.C., the then holder of all the refunding bonds. (R. 14.) Copy is attached as Appendix 2. The purpose of the Act was to permit reserve funds to be deposited in the Federal Reserve Bank drawing interest in favor of the District. The amendment provides that no funds may be withdrawn from the Federal Reserve Bank except "for the purpose of paying the principal or interest upon any bonds of said district held by Reconstruction Finance Corporation, or its successors

in interest, or for repayment to the treasurer of said reclamation district for the purposes and uses of said district." Fifty thousand dollars ($50,000.00) were withdrawn from the Federal Reserve Bank when R.F. C. sold the bonds to the bond syndicate. (R. 15.)

(f) The decision of the State Court and the Writ of Mandate issued pursuant thereto did *not* "dissolve" the reserve funds as stated by Petitioner (Pet. p. 2) but directed that the $14,835.42 transferred be used "solely for the purpose of payment of principal and interest" on the refunding bonds. (R. 102, 104, 106.)

ARGUMENT.

1. THE DECISION OF THE STATE COURT IS BASED ON A FINDING THAT THE RESERVE FUNDS WERE NOT A PART OF THE REFUNDING BONDS BUT WERE SET UP IN A COLLATERAL AGREEMENT IN FAVOR OF THE R.F.C. ONLY.

The Court below had before it the contract with the R.F.C. (R. 37 Ex. "A"), the form of bonds authorized at the election in the District (R. 53), the resolution of the District for issuance of the bonds (R. 52, Ex. "C"), the State statute authorizing a reserve to be set up in favor of the R.F.C. to cover this particular case (Section 3480 (e) Political Code); also Section 3480 (f) of the Political Code as amended with the consent of the R.F.C. in 1939; also the many State statutes relating to California reclamation districts and the construction placed on these statutes by the highest courts of the State (See R. 98), also a history of the long and involved dealings between the

District and the R.F.C. from 1937 to 1945 (R. 16) when the bonds were sold to the bond syndicate.[3] The decision decides a very narrow question based on an individual set of facts and the decision should not be disturbed.

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2. THE DECISION OF THE STATE COURT RESTS ON THE CONSTRUCTION OF STATE STATUTES, PARTICULARLY CALIFORNIA POLITICAL CODE SECTION 3480 (e).

Section 3480 (e) is special in nature and the decision of the State Court based on its construction can never serve as a precedent except in the remote possibility that the R.F.C. might in the future refinance a California reclamation district. If for any reason Section 3480 (e) as construed by the State Court were unsatisfactory to the lending agency it would be easy to amend before future refinancing loans were made.[4] At the moment the question is moot.

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3. THE SURPLUS ASSESSMENT IS IN ITSELF AN AMPLE RESERVE.

It is pointed out in the opinion of the Court below that over and above the reserve sought to be maintained by petitioner there is a surplus assessment of $684,844.40 over and above the outstanding bonds which exists by reason of the fact that the old bonds

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[3]The agreed statement of facts is 91 printed pages long.

[4]In the agreed statement of facts (R. 8) it is recited that "substantially all of the bonds held by Reconstruction Finance Corporation and issued to it by various districts of the State of California have been resold by the Reconstruction Finance Corporation * * *"

amounted on their face to $2,268,344.40 while the refunding bonds were issued in the amount of $1,583,500.00 and that this "constitutes ample security far and above the amount of the refunding bonds outstanding". (R. 102.)

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4. **THE DECISION OF THE STATE COURT IS BASED ON AN INDEPENDENT GROUND NOT CHALLENGED IN THE ASSIGNMENT OF ERRORS.**

The decision of the State Court rests on more than one ground. This separate and independent ground is not challenged by petitioner in the assignments of error or otherwise. The Court below points out (R. 104) that the State statutes applicable to the making of calls do not require that calls be made if there is already in the bond fund sufficient to meet such payments; that there is no provision of Section 3480(e) requiring specific amounts to be retained in the reserve fund and concludes:

> "Therefore, even if it were conceded that the bondholders have a right to have reserve funds maintained, it would not follow that their rights would be infringed by the transfer proposed to be made by the trustees."

5. THE PETITION RAISES NO SPECIAL IMPORTANT OR SUBSTANTIAL QUESTION OF LAW NOR WOULD THE DECISION OF THE STATE COURT IF PERMITTED TO STAND "AFFECT THE PHYSICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND THE RESPECTIVE STATES AND THE PUBLIC AGENCIES AND SUBDIVISIONS THEREOF."

Petitioner labors to show that the entire fiscal machinery set up by Congress for lending agencies of the United States will break down if the State decision stands. He argues that the conditions precedent prescribed by Congress to making the loans will be eliminated; that a decision by this Court is necessary in order to "protect and enforce the powers granted by Congress to Federal lending agencies" (Pet. p. 13); that the decision of the State Court "clogs" the re-sale of securities now held by the R.F.C.;[5] that "it will serve as a precedent hindering and impeding the carefully prepared procedure of Federal financing of State agencies" (Pet. p. 20); all past and future loans will be directly affected (Pet. p. 34); the decision of the State Court "nullifies the purpose and intent of Federal legislation designed to furnish financial aid to the States and political subdivisions and public agencies thereof." (Pet. p. 33.) The statements become more extravagant as the brief proceeds.

Of course, petitioners are "champions of no rights but their own" and even assuming that petitioner County Treasurer has a sufficient interest here to champion the asserted rights of the bondholders it can hardly be that he is also champion of the asserted

[5]This in spite of the agreed statement of facts (R. 8), quoted in footnote 4.

rights of the R.F.C. and all other Federal lending agencies.

Passing all this, it is painfully evident that this *case stands alone based as it is on the construction by the State Court of a State statute enacted to meet this precise situation and can never be a precedent for any subsequent decision* let alone the assumption by petitioner that it will upset the entire fiscal machinery of the Federal Government for making loans to promote the general welfare. The statements made by petitioner are so obviously in conflict with the record and the matters hereinbefore set forth that they refute themselves.

It is respectfully submitted the petition for writ of certiorari should be denied.

Dated, Sacramento, California,
October 27, 1948.

STEPHEN W. DOWNEY,
Attorney for Respondents.

Of Counsel,
C. F. METTEER,
DOWNEY, BRAND, SEYMOUR & ROHWER.

(Appendices 1 and 2 Follow.)

Appendix 1

Urgency Clause: Political Code Section 3480(e)

Section 3. This act is hereby declared to be an urgency measure within the meaning of section 1, Article IV of the Constitution of the State of California, and it is deemed necessary for the immediate preservation of the public peace and safety that this law shall go into immediate effect. The following is a statement of facts constituting such necessity:

Due to the agricultural depression which has extended over a period of several years, many landowners within reclamation districts have been unable to meet their installment payments owing under assessments with the result that funds were not provided to meet the maturing interest and principal of the district's bonds. To solve this situation, the Congress of the United States enacted the Emergency Farm Mortgage Act of 1933, as amended, authorizing and empowering the Reconstruction Finance Corporation to grant loans to districts so in distress and many districts in California have secured grants of loans from Reconstruction Finance Corporation pursuant to said act; that before completing said loans, Reconstruction Finance Corporation frequently requires that districts receiving such grants shall provide and set up reserve funds to insure the prompt payment of principal and interest to accrue under said loans, and that reclamation districts are not now authorized or empowered to comply with such requirements. The

Legislature hereby expressly declares that the welfare of the State requires that relief be afforded to the landowners in these districts by permitting reclamation districts to take advantage of the said Emergency Farm Mortgage Act of 1933, as amended, and to conform to the requirements of Reconstruction Finance Corporation in setting up and providing an adequate reserve fund.

Appendix 2

Statutes and Amendments to the Codes, Cal. 1939, Chapter 1027.

Section 1. Section 3480(f) of the Political Code is hereby amended to read as follows:

3480(f). The board of trustees of any reclamation district of this State which has heretofore or which may hereafter enter into an agreement with the United States of America, or any department or agency thereof, pursuant to section 3480(e) of this code, may, by resolution, direct that any money on deposit in the county treasury to the credit of any bond fund or bond reserve fund of the district, which money was derived from an assessment against lands within the district upon the security of which said bonds have been issued, and which is in an amount in excess of that required for the payment of principal and interest then due or to become due within six months thereafter upon bonds secured by such assessment or assessments, be applied to either or both of the following purposes, to-wit:

(a) For the purchase of bonds secured by such assessment or assessments and, in the event of the purchase of any such bonds, the county treasurer shall forthwith cancel the same; provided, however, that no such direction shall be given or application made, unless the unpaid principal amount of the assessment or assessments securing such bonds shall be in excess of the principal amount of bonds secured by such

assessment or assessments and then outstanding (including any bonds authorized but not yet issued).

(b) For deposit with the Federal Reserve Bank in San Francisco, California, subject to withdrawal therefrom only upon written orders of the reclamation district and the United States of America, or the department or agency thereof, including Reconstruction Finance Corporation, interested in the creation and maintenance of said fund, or by said reclamation district by and with the written consent of the United States of America, or the department or agency thereof, including Reconstruction Finance Corporation, interested in the creation and maintenance of said reserve fund; provided, however, that no such funds may be withdrawn from said account with Federal Reserve Bank except for the purpose of paying the principal or interest upon any bonds of said district held by Reconstruction Finance Corporation, or its successors in interest, or for repayment to the treasurer of said reclamation district for the purposes and uses of said district.